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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FIONA M. CUNNINGHAM, Individually and)
on Behalf of All Others Similarly Situated,)

Plaintiff,)

vs.)

APPLE, INC.,)

Defendant.)

Case No.

CLASS ACTION COMPLAINT

1. Violations of the Consumers Legal Remedies Act, California Civil Code §1750 *et seq.*;
2. Violations of the Unfair Competition Law, California Business and Professions Code §17200 *et seq.*;
3. Breach of Express Warranty;
4. Fraudulent Misrepresentation;
5. Negligent Misrepresentation; and
6. Quantum Meruit

DEMAND FOR JURY TRIAL

1 Plaintiff Fiona M. Cunningham (“Plaintiff” or “Ms. Cunningham”), individually and on
 2 behalf of all others similarly situated, brings this Class Action Complaint against defendant Apple
 3 Inc. (“Apple” or “Defendant”), and alleges as follows:

4 NATURE OF THE ACTION

5 1. This is a consumer class action brought by Plaintiff on behalf of herself and all others
 6 similarly situated who acquired, in the United States and its territories and its protectorates, Apple’s
 7 iPhone 6, 6 Plus, 6s, 6s Plus, SE, 7, 7 Plus, 8 and 8 Plus (collectively, the “iPhone Devices”) and
 8 experienced reduced functionality on their devices due to Apple’s iOS updates.

9 2. Since its debut, Apple has touted the superior performance of the iPhone, its internal
 10 processors, and operating system. Apple marketed its iPhones as high speed and high capability
 11 smartphones. Updates for Apple’s mobile operating system, iOS, are regularly released to iPhone
 12 customers. There have been numerous versions of iOS since iPhones were initially introduced, each
 13 with multiple iterations, with at least one iOS update released every calendar year.¹ The latest iOS
 14 version, iOS 11.2.2, was released on January 8, 2018.² The iOS downloads, according to Apple,
 15 purport to update and improve the performance of iPhones, preserve the security of the devices, and
 16 make the devices compatible with the newest and most up-to-date programs and applications.

17 3. iPhone users have reported reduced functionality on their iPhones as a result of
 18 Apple’s iOS updates since as far back as 2010.³ For example, users reported battery drain with the
 19 download of iOS 5;⁴ iOS 6 presented users with Bluetooth and cellular network problems;⁵ iOS 7
 20
 21

22 ¹ https://en.wikipedia.org/wiki/iOS_version_history#cite_note-193 (last visited on January 3,
 23 2018).

24 ² *Id.*

25 ³ *Id.*

26 ⁴ [https://www.engadget.com/2011/11/02/apple-confirms-ios-5-bugs-causing-battery-drain-](https://www.engadget.com/2011/11/02/apple-confirms-ios-5-bugs-causing-battery-drain-promises-a-fix/)
 27 [promises-a-fix/](https://www.engadget.com/2011/11/02/apple-confirms-ios-5-bugs-causing-battery-drain-promises-a-fix/) (last visited on January 3, 2018).

28 ⁵ <https://discussions.apple.com/thread/4318307?start=0&tstart=0> (last visited on January 3,
 2018).

1 users experienced battery drainage issues;⁶ iOS 8 triggered performance issues on older devices;⁷
 2 and iOS 9 was impacted by a bug which caused the touch ID sensor in devices to fail.⁸

3 4. In late 2016, iPhone users reported sudden shutdowns of iPhones 5 and 6 running
 4 versions of iOS 10 software.⁹ In February of 2017, Apple claimed that it had addressed the issue in
 5 its latest 10.2.1 iOS update. However, even after the release of the 10.2.1 iOS update, iPhone users
 6 still complained of reduced functionality.¹⁰

7 5. Complaints and reports regarding the manner in which iOS updates impair iPhones
 8 and the functionality of iPhone features have existed for several years.¹¹

9 6. For example, on December 18, 2017, in a report by Primate Labs, blogger John Poole
 10 plotted the performance of the iPhone 6s and iPhone 7 before and after the iOS fix and stated that
 11 Apple was deliberately slowing the performance of its devices. Poole further explained that he
 12 “believe[d] (as do others) that Apple introduced a change to limit performance when battery
 13 condition decreases past a certain point.”¹²

14 7. On December 20, 2017, in response to widespread speculation about the impact of
 15 iOS 10 on iPhone performance, Apple confirmed users’ long-held suspicions and finally admitted
 16 that its latest iOS software updates deliberately slowed the performance of certain iPhones.

17 8. On Appleinsider.com, one poster theorized as to the cause of slow-downs in the
 18 iPhone 6, as follows: “At present, the theory is that the iOS 10.2.1 update issued in part to rectify

19 ⁶ [https://9to5mac.com/2014/03/13/ios-7-1-makes-everything-faster-including-your-battery-](https://9to5mac.com/2014/03/13/ios-7-1-makes-everything-faster-including-your-battery-drain/)
 20 [drain/](https://9to5mac.com/2014/03/13/ios-7-1-makes-everything-faster-including-your-battery-drain/) (last visited on January 3, 2018).

21 ⁷ https://en.wikipedia.org/wiki/IOS_version_history#iOS_8_2 (last visited January 3, 2018).

22 ⁸ <https://www.cultofmac.com/413066/apple-apologizes-for-error-53-releases-fix/> (last visited
 on January 3, 2018).

23 ⁹ <https://discussions.apple.com/message/30989226?start=165&tstart=0> (last visited on January
 24 3, 2018).

25 ¹⁰ <https://discussions.apple.com/thread/7669667> (last visited on January 3, 2018).

26 ¹¹ [http://blackbag.gawker.com/does-apple-ruin-your-iphone-on-purpose-the-conspiracy-](http://blackbag.gawker.com/does-apple-ruin-your-iphone-on-purpose-the-conspiracy-1690649898)
 1690649898 (last visited on January 3, 2018).

27 ¹² <http://www.geekbench.com/blog/2017/12/iphone-performance-and-battery-age/> (last visited
 28 on January 3, 2018).

1 iPhone 6 shutdown issues with a low-power battery condition implemented some kind of down-
 2 clocking routing to slow the processor in afflicted devices.”¹³

3 9. Apple wrongfully released iOS updates which, unbeknownst to consumers,
 4 knowingly reduced the functionality of the iPhone Devices and forced users to incur expenses
 5 replacing these devices or their batteries. Users of iPhone Devices updated the iOS on their devices
 6 through the use of misrepresentations by, or lack of warning on the part of, Apple. Moreover,
 7 Apple’s representations about the iPhone Devices and the iOS updates failed to disclose to
 8 consumers the damaging impact the updates may have on iPhone Devices.

9 INTRADISTRICT ASSIGNMENT

10 10. A substantial part of the events or omissions which give rise to the claims in this
 11 action occurred in the county of Santa Clara, and as such this action is properly assigned to the San
 12 Jose division of this Court.

13 JURISDICTION AND VENUE

14 11. This Court has jurisdiction pursuant to 28 U.S.C. §1332(a)(1) as modified by the
 15 Class Action Fairness Act of 2005, because at least one member of the Class is a citizen of a
 16 different state than Defendant, there are more than 100 members of the Class, and the aggregate
 17 amount in controversy exceeds \$5,000,000.00, exclusive of interest and costs.

18 12. Pursuant to 28 U.S.C. §1391(b), venue is proper in this District because a substantial
 19 part of the events or omissions giving rise to the claims occurred in this Judicial District and
 20 Defendant does business throughout this District. Moreover, venue is proper pursuant to 28 U.S.C.
 21 §1391(b) because Plaintiff purchased and activated her iPhone 6 in this District.

22 PARTIES

23 13. Plaintiff Cunningham is a citizen and resident of the State of New York. Ms.
 24 Cunningham purchased her iPhone in or about May 2015 and believes that the slowdown of her
 25 iPhone 6 occurred in connection with the download of iOS 10 software.

26
 27 ¹³ [http://appleinsider.com/articles/17/12/11/apple-may-fix-aging-battery-issues-prevent-](http://appleinsider.com/articles/17/12/11/apple-may-fix-aging-battery-issues-prevent-random-shutdowns-by-slowing-down-iphones)
 28 [random-shutdowns-by-slowing-down-iphones](http://appleinsider.com/articles/17/12/11/apple-may-fix-aging-battery-issues-prevent-random-shutdowns-by-slowing-down-iphones) (last visited on January 3, 2018).

14. Defendant Apple is a California corporation with its headquarters and principal place of business in Cupertino, California. Apple is the designer and manufacturer of the iPhone and iOS software. It maintains its headquarters and principal place of business in Cupertino, California.

15. Apple transacts substantial business throughout the State of California. The design, advertising, marketing, and distribution of Apple devices and software stems from this District. Substantially all of the misconduct alleged in this Complaint occurred in or emanated from California.

SUBSTANTIVE ALLEGATIONS

Background

16. Apple manufactures, designs, produces, and sells several types of electronic products, including, among others, personal computers, portable music players, cellular phones, and other communication devices. Apple currently has over 450 retail stores in 13 countries, as well as an online store that sells these electronic devices.

17. Apple debuted the iPhone in 2007.¹⁴ Since the first generation iPhone, Apple has released at least one new iPhone model every year: the iPhone 3G in 2008, the 3GS in 2009, the 4 in 2010, the 4s in 2011, the 5 in 2012, the 5c and 5s in 2013, the 6/6 Plus in 2014, the 6s/6s Plus in 2015, the SE in March 2016, the 7/7 Plus in September 2016, the 8/8 Plus in September 2017 and the X in November 2017.¹⁵

18. Apple has consistently marketed the iPhone Devices as possessing impressive functioning speed and power efficiency. For instance, in reference to the iPhones 6, 7, and 8, Apple's website stated the following:¹⁶

¹⁴ [https://en.wikipedia.org/wiki/IPhone_\(1st_generation\)](https://en.wikipedia.org/wiki/IPhone_(1st_generation)) (last visited on January 3, 2018).

¹⁵ <https://en.wikipedia.org/wiki/IPhone> (last visited on January 3, 2018).

¹⁶ iPhone 6 (<https://web.archive.org/web/20140926233000/https://www.apple.com/iphone-6/>); iPhone 7 (<https://web.archive.org/web/20160924053528/http://www.apple.com/iphone-7/>); iPhone 8 (<https://www.apple.com/iphone-8/>); iPhone X (<https://www.apple.com/iphone-x/>) (last visited January 3, 2018).

1

2 • iPhone 6:

3 Faster wireless.
4 Far and wide.

5 iPhone 6 has faster LTE download speeds,*
6 and it supports more LTE bands than any
7 other smartphone so you can roam in more
8 places. And when connected to Wi-Fi, you'll
9 get up to 3x faster speeds.

10 • iPhone 7:

11 iPhone 7 dramatically improves the most important aspects of the iPhone
12 experience. It introduces advanced new camera systems. The best performance
13 and battery life ever in an iPhone. Immersive stereo speakers. The brightest, most
14 colorful iPhone display. Splash and water resistance.¹ And it looks every bit as
15 powerful as it is. This is iPhone 7.

16 A10 Fusion Chip

17 The most powerful chip
18 ever in a smartphone.

19 2x

20 faster than
21 iPhone 6



22 Longest battery life
23 ever in an iPhone

24 Wi-Fi and Cellular

25 Faster LTE with the best
26 worldwide roaming.

27 • iPhone 8:

28 Faster CPU

Introducing A11 Bionic. With four
efficiency cores that are up to
70 percent faster than A10
Fusion. And two performance
cores that are up to 25 percent
faster.

Power
Efficiency

A second-generation
performance controller provides
more power when you need it.
While delivering the same great
battery life.⁴

19. Every iPhone device comes equipped with a mobile operating system called iOS. iOS consists of a collection of software applications, known as “Apps,” that allows users to utilize all of the features of Apple products.

20. Since the iPhone was first released, there have been many versions of iOS, the most recent being iOS 11.¹⁷ Users are prompted to download the newest iOS version onto their iPhone device via a message from Apple when it is released. A chart reflecting the release dates of several of the iPhone models and the corresponding iOS updates is depicted below:¹⁸

Date	iOS	iPhone Model
September 19, 2012	iOS 6 was released	
September 21, 2012		iPhone 5 was released
September 18, 2013	iOS 7 was released	
September 20, 2013		iPhone 5c and 5S was released
September 17, 2014	iOS 8 released	
September 19, 2014		iPhone 6/6 Plus released
September 16, 2015	iOS 9 released	
September 23, 2015	iOS 9.0.1 released	
September 25, 2015		iPhone 6S and 6S Plus released
September 30, 2015	iOS 9.0.2 released	
October 21, 2015	iOS 9.1 released	
December 8, 2015	iOS 9.2 released	
January 19, 2016	iOS 9.2.1 released	
March 21, 2016	iOS 9.3 released	
March 31, 2016	iOS 9.3.1 released	iPhone SE released
May 16, 2016	iOS 9.3.2 released	
July 18, 2016	iOS 9.3.3 released	
August 4, 2016	iOS 9.3.4 released	
August 25, 2016	iOS 9.3.5 released	
September 13, 2016	iOS 10 released	
September 16, 2016		iPhone 7/7 Plus released
September 23, 2016	iOS 10.0.2 released	

¹⁷ https://en.wikipedia.org/wiki/IOS_version_history (last visited January 12, 2018).

¹⁸ *Id.*

Date	iOS	iPhone Model
October 17, 2016	iOS 10.0.3 released	
October 24, 2016	iOS 10.1 released	
October 31, 2016	iOS 10.1.1 released	
December 12, 2016	iOS 10.2 released	
January 23, 2017	iOS 10.2.1 released	
March 27, 2017	iOS 10.3 released	
April 3, 2017	iOS 10.3.1 released	
May 15, 2017	iOS 10.3.2 released	
July 19, 2017	iOS 10.3.3 released	
September 19, 2017	iOS 11 released	
September 22, 2017		iPhone 8/8 Plus released
September 26, 2017	iOS 11.01 released	
October 3, 2017	iOS 11.0.2 released	
October 11, 2017	iOS 11.0.3 released	
October 31, 2017	iOS 11.1 released	
November 3, 2017		iPhone X released
November 9, 2017	iOS 11.1.1 released	
November 16, 2017	iOS 11.1.2 released	
December 2, 2017	iOS 11.2 released	
December 13, 2017	iOS 11.2.1 released	
January 8, 2018	iOS 11.2.2 released	

21. iPhone users are continually prompted to download the most recent version of iOS software. If users elect to ignore these constant reminders, the device would become incompatible with current Apps and difficult to operate.

22. Apple has consistently represented that its iOS updates improve rather than hinder the performance and security of iPhone Devices. For example, Apple's website states: "Keeping your software up to date is one of the most important things you can do to maintain your Apple product's security."¹⁹ Apple has urged, and continues to urge, iPhone users to update their devices **to add vital security updates and bug fixes necessary for the iPhones to properly function**. Users are essentially forced to make a "choice" between leaving their personal data susceptible to hackers and

¹⁹ <https://support.apple.com/en-us/HT201222> (last visited on January 3, 2018).

identity thieves, or upgrade their iOS software which remedies serious security breaches. In essence, no reasonable consumer, including Plaintiff, would leave his/her iPhone vulnerable to security breaches by not upgrading to the new iOS version.

23. Several iOS updates were, in fact, downloaded without the need or opportunity for action or approval by users. For example, iOS 7 automatically downloaded onto iPhone devices.²⁰

24. The iOS notifications, which alert users to update their iPhones, highlight the positive features of iOS updates but fail to inform users of the fact that these updates reduce the functionality of the devices.

25. For example, Apple's website stated that the iOS 7 update contained numerous new features and "[b]ug fixes."²¹ Additionally, the notification sent to users to download iOS 7 highlighted the software's "beautiful new design" and "hundreds of new features."

26. Likewise, with respect to iOS 9, Apple's website stated that the update "has incredible new features to make your experience more seamless, efficient, and enjoyable."²² The iOS 9 notification also stated that the software would improve the devices' functionality and provide critical security features. The iOS 9 notification containing these statements is depicted below:



²⁰ <https://www.cnet.com/news/ios-6-holdouts-complain-about-large-unwanted-ios-7-download/> (last visited on January 3, 2018).

²¹ https://support.apple.com/kb/dl1682?locale=en_US (last visited on January 3, 2018).

²² <https://www.apple.com/lb/support/ios9/> (last visited on January 3, 2018).

1 27. iPhone users have reported reduced functionality on their iPhone Devices as a result
 2 of Apple's iOS updates, claims which Apple has consistently denied. For example, users reported
 3 battery drain bugs with the download of iOS 5;²³ iOS 6 presented users with Bluetooth and cellular
 4 network problems;²⁴ iOS 7 users experienced battery drainage issues;²⁵ iOS 8 triggered performance
 5 issues on older devices;²⁶ and iOS 9 was impacted by several issues, including, for example, a bug
 6 called "Error 53" wherein devices that have touch ID sensors replaced by a repair shop fail.²⁷

7 28. In late 2016, iPhone users reported sudden shutdowns of their devices as a result of
 8 downloading versions of iOS 10.²⁸ 3,429 members of the Apple discussion group reported that they
 9 experienced this same issue.²⁹ In February of 2017, Apple claimed that it had almost entirely
 10 resolved the issue in its latest 10.2.1 iOS update. In a statement to TechCrunch, Apple said: "With
 11 iOS 10.2.1, Apple made improvements to reduce occurrences of unexpected shutdowns that a small
 12 number of users were experiencing with their iPhone."³⁰

13 29. The alert to download iOS 10.2.1, which purportedly repaired iPhones that were
 14 shutting down unexpectedly, stated that the update included "bug fixes" and improvements in device
 15 security. A depiction of the iOS 10.2.1 notification is set forth below:
 16
 17
 18
 19

20 ²³ *Supra* at note 4.

21 ²⁴ *Supra* at note 5.

22 ²⁵ *Supra* at note 6.

23 ²⁶ *Supra* at note 7.

24 ²⁷ *Supra* at note 8.

25 ²⁸ *Supra* at note 9.

26 ²⁹ *Id.*

27 ³⁰ <https://techcrunch.com/2017/02/23/apple-says-ios-10-2-1-has-reduced-unexpected-iphone-6s-shutdown-issues-by-80/> (last visited January 16, 2018).



30. Apple does not allow iPhone users to revert their iOS software to a previous, better functioning version of iOS. Moreover, Apple does not warn users that these iOS updates are irreversible.

31. Based on Apple's instructions, Ms. Cunningham downloaded and installed the iOS updates recommended for her iPhone as they were released by Apple and appeared as notifications (to be downloaded) on her iPhone. These updates, as best as she can recall, included iOS 10.2.1 and iOS 11.2. At no time did Apple advise or warn Ms. Cunningham that installing any of its iOS updates, including the aforementioned updates, would result in diminishing the performance of her phone under certain conditions. Indeed, and as depicted above, while the notices Ms. Cunningham received regarding the updates discussed the benefits of the same, they were silent about performance-throttling or functionality reduction.

32. Nonetheless, Ms. Cunningham first experienced slowdowns of her iPhone's performance in or about the Fall of 2016. It was not until January 2018 that Ms. Cunningham first learned that Apple had intentionally caused her iPhone's performance to diminish.

Apple Admits Its Actions

33. iPhone users have speculated that iOS updates impair the functionality of iPhone Devices.

34. For example, on December 18, 2017, in a report by Primate Labs, blogger John Poole plotted the performance of the iPhone 6s and iPhone 7 before and after the iOS fix and stated that Apple was deliberately slowing the performance of its devices. Poole further explained that he

1 “believe[d] (as do others) that Apple introduced a change to limit performance when battery
2 condition decreases past a certain point.”³¹

3 35. On December 20, 2017, Apple finally admitted to this conduct and acknowledged that
4 it had deliberately slowed the performance of certain older iPhones without users’ consent. Apple
5 explained, as follows:

6 Our goal is to deliver the best experience to customers, which includes overall
7 performance and prolonging the life of their devices. Lithium-ion batteries become
8 less capable of supplying peak current demands when in cold conditions, have a low
battery charge or as they age over time, which can result in the device unexpectedly
shutting down to protect its electronic components.

9 ***Last year we released a feature for iPhone 6, iPhone 6s and iPhone SE to smooth***
10 ***out the instantaneous peaks only when needed to prevent the device from***
11 ***unexpectedly shutting down during these conditions.*** We’ve now extended that
feature to iPhone 7 with iOS 11.2, and plan to add support for other products in the
future.³²

12 36. On December 11, 2017, one poster on Appleinsider.com theorized as to the cause of
13 slow-downs in the iPhone 6, as follows: “At present, the theory is that the iOS 10.2.1 update issued
14 in part to rectify iPhone 6 shutdown issues with a low-power battery condition implemented some
15 kind of down-clocking routing to slow the processor of afflicted devices.”³³

16 37. In response to negative publicity and customer criticism, Apple later published an
17 apology letter that purported to explain its actions.³⁴ The letter states as follows:

18 About a year ago in iOS 10.2.1, we delivered a software update that improves power
19 management during peak workloads to avoid unexpected shutdowns on iPhone 6,
20 iPhone 6 Plus, iPhone 6s, iPhone 6s Plus, and iPhone SE. With the update iPhone
21 dynamically manages the maximum performance of some system components when
needed to prevent a shutdown. While these changes may go unnoticed, in some
cases users may experience longer launch times for apps and other reductions in
performance.

22
23
24 ³¹ *Supra* at note 12.

25 ³² <https://techcrunch.com/2017/12/20/apple-addresses-why-people-are-saying-their-iphones-with-older-batteries-are-running-slower/> (last visited January 16, 2018).

26 ³³ *Supra* at note 13.

27 ³⁴ See <https://www.apple.com/iphone-battery-and-performance/> (last visited on January 12,
28 2018).

38. Consumers now know, directly from Apple, what reports and users previously speculated: that Apple's software updates purposefully slowed or "throttled down" the performance and speed of iPhones. Apple stated that it throttled down certain of the iPhone Devices to prevent shutdowns when a battery's voltage fell to a certain level under three circumstances: "[w]ith a low battery state of charge, a higher chemical age, or colder temperatures."³⁵ Apple also identified several ways in which its "throttle down" feature could affect performance on the iPhones.³⁶

39. In its apology letter, Apple acknowledged for the first time that replacing an iPhone's "chemically aged" battery would resolve the voltage issues that would cause the performance throttling to occur.³⁷ Apple also indicated that it was developing an iOS software update, to be released in early 2018, "with new features that give users more visibility into the health of their iPhone's battery, so they can see for themselves if its conditions is affecting performance."³⁸

40. Apple further admitted that it had not given iPhone customers key information regarding the cause of the diminution in performance that many of them, including Plaintiff, experienced due to the iPhone's battery issues and Apple's decision to throttle down performance.

41. Plaintiff and Class members were unaware that Apple's iOS updates – including, *e.g.*, as admitted by Apple, 10.2.1 and later updates – were engineered to intentionally slow down the performance speed of iPhones or that these updates otherwise had the effect of reducing iPhones' functionality.

42. Apple's iOS download notifications and corresponding statements regarding iOS updates on its website did not disclose to, or warn consumers that the slowdown and reduced functionality of certain iPhone devices was a planned result of iOS updates. Nor did Apple inform

³⁵ See <https://support.apple.com/en-us/HT208387> (last visited on January 12, 2018). This is an article entitled "iPhone Battery and Performance" that Apple issued on December 28, 2017, contemporaneously with its apology letter.

³⁶ See *id.*

³⁷ *Supra* at note 35 ("Of course, when a chemically aged battery is replaced with a new one, iPhone performance returns to normal when operated in standard conditions.") (last visited January 12, 2018). A phone is not operated in standard conditions when it is operated in "a low state of charge" or "in a cold temperature environment." See *Supra* at Note 36.

³⁸ *Supra* at note 35.

1 consumers that the shutdown bug that impacted many iPhones might be remedied by replacing the
 2 battery in affected devices and avoiding the download of new iOS versions. Battery replacement at
 3 the Apple store costs less than \$100, whereas the cost to upgrade to a new iPhone can range between
 4 \$200 to \$1,000, depending on the model.

5 43. When Plaintiff and the Class members bought their iPhone Devices they had a
 6 reasonable expectation that these devices would function properly and that performance would not
 7 be degraded by Apple – intentionally or otherwise. Moreover, Plaintiff and Class members expected
 8 that the iPhone Devices were compatible with Apple’s own iOS software updates. It was more than
 9 an expectation. It was what iPhone users were told. When each iOS update was released, users were
 10 encouraged and, in some cases, forced to download the new version of the iOS on their devices.
 11 Nothing on Apple’s website or in its iOS notifications informed consumers of the deleterious impact
 12 that iOS software may (or would) have on the devices.

13 44. Apple’s intentional degradation of the iPhones’ performance through the release of
 14 iOS impacted the usability of Plaintiff and the Class members’ devices. Effectively, Apple has
 15 forced the obsolescence of Plaintiff and Class members’ iPhones by secretly diminishing their
 16 performance. Thus, Apple’s admission has confirmed what iPhone users have long suspected – *i.e.*,
 17 that Apple deliberately degrades the performance of older iPhone models through iOS updates to
 18 encourage users to buy new iPhones.³⁹ As an article in VOX noted, “the theory goes, Apple
 19 intentionally messes with your iPhone, frustrating you and forcing you to shell out money to
 20 upgrade.”⁴⁰

21 45. Unsuspecting customers were forced to purchase new iPhones relying, in part, on
 22 Apple’s false promises and representations of performance and reliability, which Apple made after it
 23 had designed and released (and was fully aware of) its performance-throttling iOS update.

24
 25 ³⁹ See <https://www.macrumors.com/2018/01/02/apple-replaces-iphone-batteries-that-pass-tests/>
 26 (visited on January 12, 2018)) (*e.g.*, “Too little too late. Apple genius denied the iphone [sic] 6 (of a
 family member) the \$79 out of warranty battery replacement back in September and suggested a
 hardware upgrade instead.”).

27 ⁴⁰ <https://www.vox.com/2017/12/22/16807056/apple-slow-iphone-batteries> (last visited January
 28 3, 2018).

1 Alternatively, iPhone owners needed to purchase batteries at full price in an effort to resolve the
2 performance issues.

3 46. Apple owed owners of the iPhone Devices a duty to refrain from purposely degrading
4 the performance of their devices without their knowledge. These customers could not have
5 reasonably learned about Apple's "throttle down" feature.

6 47. While a reasonable consumer would expect his/her battery life to shorten over time,
7 he/she would not expect that it would lead to degraded performance intentionally caused by the
8 manufacturer.

9 48. As set forth further below, Apple's wrongful conduct directly and proximately caused
10 damage to Plaintiff and the Class.

11 CLASS ACTION ALLEGATIONS

12 49. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil
13 Procedure 23(a) and 23(b) on behalf of herself and all others similarly situated as members of the
14 following classes:

15 **California Class:** All users of iPhone Devices in California who downloaded a
16 version of iOS and who experienced reduced functionality on their device.

17 **Nationwide Class:** All users of iPhone Devices in the United States who
18 downloaded a version of iOS and who experienced reduced functionality on their
19 device.

20 **California Post-iOS 10.2.1 Class:** All users of iPhone Devices in California who
21 downloaded iOS 10.2.1 or any later iOS version who experienced reduced
22 functionality on their device.

23 **Nationwide Post-iOS 10.2.1 Class:** All users of iPhone Devices in the United States
24 who downloaded iOS 10.2.1 or any later iOS version who experienced reduced
25 functionality on their device.

26 50. Subject to additional information obtained through further investigation and
27 discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or an
28 amended complaint. Specifically excluded from the proposed Class are Defendant and its officers,
directors, agents, trustees, parents, children, corporations, trusts, representatives, employees,
principals, servants, partners, joint ventures, or entities controlled by Defendant; its heirs, successors,

1 assigns, or other persons or entities related to or affiliated with Defendant; its directors, or any of
 2 them; the Judge assigned to this action; and any member of the Judge's immediate family.

3 51. **Numerosity.** The members of the Class are so numerous that their individual joinder
 4 is impracticable. Plaintiff is informed and believes, and on that basis alleges, that the Class contains
 5 millions of members. The precise number of Class members is unknown to Plaintiff. The true
 6 number of Class members is known by Defendant, however, and, thus, may be notified of the
 7 pendency of this action by first class mail, electronic mail, and by published notice.

8 52. **Existence and Predominance of Common Questions of Law and Fact.** Common
 9 questions of law and fact exist as to all members of the Class and predominate over any questions
 10 affecting only individual Class members. These common legal and factual questions include, but are
 11 not limited to, the following:

12 (a) Whether the functionality of the iPhone Devices was reduced as a result of
 13 Apple's action on the iPhone Devices;

14 (b) Whether the battery life of iPhone Devices was impacted by the download of
 15 iOS updates;

16 (c) Whether the iPhone Devices' speed was impacted by the download of the iOS
 17 updates;

18 (d) Whether Defendant was negligent in the design, manufacturing, and
 19 distribution of the iPhone Devices;

20 (e) Whether Defendant was negligent in the design, manufacturing, and
 21 distribution of the iOS software updates;

22 (f) Whether Defendant had an obligation to disclose the negative impact of iOS
 23 software updates or inform consumers of alternatives to downloading iOS;

24 (g) Whether Defendant failed to disclose the negative impact of iOS software
 25 updates or inform consumers of alternatives to downloading iOS;

26 (h) Whether Defendant violated the California Act (defined below);

27 (i) Whether Defendant violated California's Unfair Competition Law (defined
 28 below);

(j) Whether Defendant breached the terms of its contract, including express warranties, with Plaintiff and the Class by not providing the products as advertised and as a result, have caused damages in the amount of the purchase price of Defendant's product.

(k) Whether Defendant negligently and recklessly omitted certain material facts regarding the impact of iOS on the iPhone Devices;

(l) Whether Defendant willfully, falsely and knowingly omitted various material facts regarding the quality and character of the iPhone Devices causing injury and harm to Plaintiff and the Class;

(m) Whether Plaintiff and members of the Class are entitled to statutory relief;

(n) Whether Plaintiff and members of the Class are entitled to compensatory relief;

(o) Whether Plaintiff and members of the Class are entitled to damages, and what is the proper measure of damages; and

(p) Whether Plaintiff and the other Class members are entitled to declaratory and injunctive relief.

53. **Typicality.** Plaintiff's claims are typical of the claims of the members of the Class in that Defendant manufactured, marketed, advertised, sold, and warranted the iPhone Devices to Plaintiff and all other members of the Class.

54. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has retained counsel highly experienced in complex consumer class action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff has no adverse or antagonistic interests to those of the Class.

55. **Superiority.** A class action is superior to all other available means for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members is relatively small compared to the burden and expense that would be entailed by individual litigation of their claims against Defendant. It would thus be virtually impossible for Class members, on an individual basis, to obtain effective redress for the wrongs done to them. Furthermore, even if Class members could afford such individualized litigation, the court

1 system could not. Individualized litigation would create the danger of inconsistent or contradictory
2 judgments arising from the same set of facts. Individualized litigation would also increase the delay
3 and expense to all parties and the court system from the issues raised by this action. By contrast, the
4 class action device provides the benefits of adjudication of these issues in a single proceeding,
5 economies of scale, and comprehensive supervision by a single court, and presents no unusual
6 management difficulties under the circumstances here.

7 56. In addition, the Class may be also certified because:

8 (a) the prosecution of separate actions by individual Class members would create
9 a risk of inconsistent or varying adjudication with respect to individual Class members that would
10 establish incompatible standards of conduct for Defendant;

11 (b) the prosecution of separate actions by individual Class members would create
12 a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the
13 interests of other Class members not parties to the adjudications, or substantially impair or impede
14 their ability to protect their interests; and/or

15 (c) Defendant has acted or refused to act on grounds generally applicable to the
16 Class thereby making appropriate final declaratory relief with respect to the members of the Class as
17 a whole.

18 57. The claims asserted herein are applicable to all consumers throughout the United
19 States who acquired, for use and not resale, the iPhone Devices.

20 58. Adequate notice can be given to Class members directly using information
21 maintained in Defendant's records or through notice by publication.

22 59. Damages may be calculated from the claims data maintained in Defendant's records,
23 so that the cost of administering a recovery for the Class can be minimized. However, the precise
24 amount of damages available to Plaintiff and the other members of the Class is not a barrier to class
25 certification.

COUNT I

**Violations of the Consumers Legal Remedies Act
California Civil Code §1750, *et seq.***

60. Plaintiff repeats and realleges the allegations contained in all preceding paragraphs as if fully set forth herein.

61. This cause of action is brought pursuant to Consumers Legal Remedies Act, California Civil Code §1750, *et seq.* (the “California Act”). Plaintiff is a consumer as defined by California Civil Code §1761(d). The product is a good within the meaning of the California Act.

62. Defendant violated and continues to violate the California Act by engaging in the following practices proscribed by California Civil Code §1770(a) in transactions that were intended to result in, and did result in, the sale of the product:

(a) Representing that the iPhone Devices, as well as the iOS loaded onto and updated in each device, have characteristics and benefits which they do not have;

(b) Representing that the iPhone Devices, as well as the iOS loaded onto and updated in each device, are of a particular standard, quality, or grade, which they are not;

(c) Advertising the iPhone Devices with intent not to sell them as advertised; and

(d) Representing that the iPhone Devices, as well as the iOS loaded onto and updated in each device, has been supplied in accordance with previous representations when they have not.

63. Defendant knew, or should have known, that its representations and advertisements regarding the iPhone Devices were unsubstantiated, false, and misleading.

64. Pursuant to California Civil Code §1782(d), Plaintiff seeks a Court order enjoining the above-described wrongful acts and practices of Defendant and for restitution and disgorgement.

65. Pursuant to §1782 of the California Act, Plaintiff sent a notice letter by certified mail to Defendant’s CEO, Timothy Cook.

COUNT II

**Violation of California's Unfair Competition Law
California Business and Professions Code §17200, *et seq.***

66. Plaintiff realleges and incorporates by reference the previous allegations as if fully set forth herein.

67. Plaintiff brings this count on behalf of herself and the proposed class.

68. California's Unfair Competition Law ("UCL") prohibits "any unlawful, unfair or fraudulent business act or practice" Cal. Bus. & Prof. Code §17200. There are three prongs of the UCL: acts or business practices that are (1) unlawful; (2) unfair; or (3) fraudulent.

69. Apple's development, marketing, advertising and distribution of iPhone Devices and its operating system and, more generally, Apple's choices, policies, conduct, and actions were undertaken or performed in California. The claims alleged herein, therefore, emanated from California.

A. Unlawful Conduct

70. Defendant violated §17200's prohibition against engaging in unlawful acts and practices by engaging in false and misleading advertising and by omitting material facts from purchasers of its products and iOS. As alleged more fully herein, Apple's marketing and sale of iPhone Devices and, more specifically, its failure to warn consumers of the negative impact iOS updates would have on those iPhone Devices, violated California Civil Code §1750 and the common law. Plaintiff reserves the right to allege other violations of law, which constitute other unlawful business acts or practices. Apple's conduct is ongoing and continues to this date.

B. Unfair Conduct

71. Apple's conduct is unfair under the UCL in, at a minimum, as follows:

(a) Apple urged consumers to install the regular updates to its iOS software, resulting in the systematic installation of performance-throttling software on iPhones without the knowledge or consent of Plaintiff or putative Class members. By doing so, Apple deprived affected iPhone owners of the performance as existed at the time of purchase; rather, Apple knowingly forced

1 the degradation of the iPhones' functionality (*e.g.*, at a very minimum, under the circumstances it
2 admitted);

3 (b) Apples conduct is substantially injurious to consumers, offends public policy,
4 and is immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any
5 alleged benefits attributable to such conduct. Specifically, any utility gained by upgrading the iOS
6 software of the iPhones Devices was outweighed by the significant diminution of functionality that
7 occurred as a result of harm to the devices from the upgrade; and

8 (c) Apple chose an unfair, and therefore unlawful, course of action when other,
9 lawful alternatives were available. For example, Apple could and should have provided owners of
10 the iPhone Devices with the right to decide whether to update iOS with the benefit of the full scope
11 of information needed to make the decision as to whether to download and install a particular iOS
12 based on offsetting considerations (*e.g.*, reduced battery power and/or other decreased functionality
13 as compared to potential increases and/or requisite security protocols).

14 72. Apple engaged in this conduct at the expense of its customers' rights and expectations
15 and in order to gain unfair commercial advantage over its competitors. Apple sought to avoid public
16 knowledge of the battery shutdown issues plaguing the iPhones to avoid damage to its sales or its
17 reputation. It withheld critical information from Plaintiff and the Class members, competitors, and
18 the marketplace at large, all to its unfair competitive advantage.

19 73. Apple's behavior emanated from its headquarters in California. It caused harm to the
20 Plaintiff and putative class as alleged in this Complaint. Had plaintiff and the class known that
21 Apple had engaged, or would engage, in this unfair behavior, they would not have purchased the
22 iPhone Devices or, alternatively, would not have purchased them at the premium price they paid
23 (*e.g.*, they would only have purchased them at lesser prices and/or they would have purchased less
24 expensive phones).

25 74. Accordingly, Plaintiff and the Class members have suffered injury in fact, including
26 lost money or property, as a result of Apple's unfair behavior.

27 75. Defendant's business practices are also unfair in that Defendant has refused to
28 adequately compensate Plaintiff and Class members for the damage caused by Defendant's actions.

1 76. Plaintiff and Class members seek to enjoin further unfair acts or practices by Apple
2 under Cal. Bus. & Prof. Code § 17200.

3 **C. Fraudulent Conduct**

4 77. Defendant's business practices, as set forth herein, constitute fraudulent conduct
5 under the UCL because they were likely to deceive, and did deceive, Class members into believing
6 that the iPhones Devices were compatible with iOS.

7 78. Apple urged consumers to install iOS updates – including, specifically, 10.2.1 and
8 11.2 – by way of false and fraudulent statements and omissions as to the contents of those software
9 updates. The iOS updates led to the deterioration of battery-life and functionality of the iPhone
10 Devices as a whole. This, in turn, led to sales of new iPhones and battery replacements to Class
11 members who would not have outlaid the additional costs had they known the real truth (*e.g.*, that
12 performance slowdowns were actually caused by Apple, and that a new battery might suffice to
13 restore the performance of their current phones). Apple's concealment of the negative impact on
14 iPhone Devices caused by iOS updates impeded Plaintiff and Class members from seeking full or
15 partial refunds for impacted devices intentionally throttled by Apple.

16 79. Apple marketed and sold iPhone Devices utilizing representations as to the stellar
17 performance that would be expected from these phones, despite the fact that its iOS updates and
18 corresponding degradation of the iPhone Devices' features would cause iPhones to fail to meet the
19 advertised performance.

20 80. Plaintiff and the Class members had no reason at the time of purchase to suspect or
21 believe that updating the iOS software on their iPhone Devices would cause any negative effects.
22 Likewise, at the time each iOS was released, and iPhone users were prompted to download and
23 install the added benefits purportedly associated with the software updates, Plaintiff and the Class
24 members had no reason to believe that updating the iOS software on their iPhone Devices would
25 cause any negative effects. Indeed, Apple's advertising led Plaintiff to believe the exact opposite –
26 that updating the iPhone would bring only positive benefits, such as new features, bug fixes and
27 increased security measures, to their devices.

1 manufacturer and that its phones, along with the iOS updates, are reliable and able to perform as
2 promised. The false representations were material to consumers because the representations played
3 a significant role in the value of the iPhone Devices they purchased.

4 105. Plaintiff and Class members accepted the terms of use, which were silent on the
5 performance-throttling features that Apple had installed in them. Plaintiff and Class members had
6 no way of knowing that Apple's representations as to the contents of the subject iOS updates were
7 gravely misleading. Plaintiff and proposed Class members did not (and could not) discover Apple's
8 deception on their own.

9 106. Although Apple had a duty to ensure the accuracy of release statements it published
10 with respect to its iOS updates, and to ensure the accuracy of performance promises and
11 representations it made in order to induce sales of new phones, it did not fulfill these duties.

12 107. Apple actively misrepresented material facts partly to pad and protect its profits, and
13 to maintain and grow its reputation as a premier designer and vendor of smartphones and to enhance
14 the brand's image and increase its sales. Such benefits, however, came at the expense of Plaintiff
15 and the Class members.

16 108. Plaintiff and the Class members were unaware of these material misrepresentations,
17 and they would not have acted as they did if they had known the truth. Plaintiff's and the putative
18 Class members' actions were justified given Apple's misrepresentations. Apple was in exclusive
19 control of the material facts, and such facts were not known to the public, Plaintiff, or the proposed
20 Class.

21 109. Due to Apple's misrepresentations, Plaintiff and the Class members sustained injury
22 due to the throttling of their iPhones without their knowledge. Plaintiff and the Class members are
23 entitled to recover full or partial refunds for iPhones or batteries they purchased due to Apple's
24 misrepresentations, or they are entitled to damages for the diminished value of their iPhone Devices,
25 which no longer perform as promised and expected due to Apple's behavior as alleged in this
26 Complaint.

27 110. Accordingly, Apple is liable to Plaintiff and the Class members for damages in an
28 amount to be proven at trial.

111. Further, Apple's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Class members' rights and well-being, and as part of efforts to enrich itself in California at the expense of consumers. Apple's acts also were done in order to gain commercial advantage over its competitors, and to drive consumers away from consideration of competitor devices as alleged in this Complaint. Apple's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

112. Plaintiff acquired the iPhone 6, and then downloaded and installed the prompted iOS at the urging of Apple, with the understanding that the iPhone 6 would function as advertised after updating iOS. That proved to be untrue, and is the direct and proximate results of which were injury and harm to Plaintiff and the Class.

COUNT VI

Quantum Meruit

113. Plaintiff realleges and incorporates by reference the previous allegations as if fully set forth herein.

114. Plaintiff brings this count on behalf of herself and the Class members.

115. In the event that no adequate legal remedy is available, Plaintiff brings this claim in the alternative in order to pursue restitution based on Apple's unjust enrichment.

116. Apple has unjustly received and retained monetary benefits from Plaintiff and the Class members, and inequity has resulted.

117. Apple sold Plaintiff and Class members iPhone Devices marketed to have a premium level of performance. These iPhone Devices' prices reflected their promised premium performance. Once Apple falsely induced Plaintiff and the Class members to install the iOS updates at issue which degraded the devices' performance, the value of these devices to Plaintiff and the proposed Class dropped. Yet Apple has retained all the funds they paid. Further, Apple has induced sales of new iPhones and batteries due to its throttling, which it convinced putative Class members to interpret as obsolescence.

1 118. Apple has retained these monetary benefits that it obtained as a consequence of the
2 wrongful practices identified in this Complaint.

3 119. Thus, Plaintiff and members of the Class conferred a monetary benefit on Defendant.

4 120. Additionally, through its false and misleading advertising campaign, as alleged more
5 fully herein, Defendant has unlawfully received money and other benefits at the expense of Plaintiff
6 and the Class members.

7 121. Defendant's receipt and retention of this financial benefit is inequitable under the
8 circumstances.

9 122. Plaintiff and the Class members were not aware of the true facts about the iPhone
10 Devices and did not benefit from Apple's conduct. On the other hand, Apple knowingly accepted
11 and has retained the benefits of its unjust conduct.

12 123. Therefore, Defendant should be ordered to disgorge its ill-gotten gains as restitution
13 under the theory of quantum meruit or otherwise, in amounts according to proof.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for relief
16 and judgment against Defendant as follows:

17 A. Certification of this action as a Class Action, appointment of Plaintiff as a Class
18 representative, and appointment of the undersigned counsel as Class counsel;

19 B. An order declaring the actions complained of herein to be in violation of the statutory
20 laws set forth above including the California Act and the UCL;

21 C. An award of compensatory damages, statutory damages, restitution; penalties; and
22 disgorgement in amounts to be determined at trial;

23 D. Orders temporarily and then permanently enjoining Apple from continuing the unfair
24 and deceptive business practices alleged in this complaint, in particular the throttling of any iPhone
25 Devices without the consent of the iPhone's owner, and orders effecting the correction or mitigation
26 of the unfair and deceptive practices alleged herein;

27 E. An award of pre-judgment and post-judgment interest;
28

1 F. An award of costs, including, but not limited to, discretionary costs, attorneys' fees,
2 and expenses incurred in prosecuting this case; and

3 G. Granting such other and further relief as the Court deems just and proper.

4 **JURY DEMAND**

5 Plaintiff hereby demands a jury trial on all issues so triable.

6 DATED: January 16, 2018

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